

This rule was filed as SIC Rule 88-5.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 21 ADMINISTRATIVE PROCEDURES FOR NEW MEXICO FINANCIAL INSTITUTIONS
APPLYING FOR DEPOSITS OF SEVERANCE TAX PERMANENT FUND

2.60.21.1 ISSUING AGENCY: State Investment Council.
[Recompiled 10/01/01]

2.60.21.2 SCOPE: These regulations will apply to applications received by the state investment council from banks, savings and loan associations, and credit unions for all deposits, including reinvestment of existing deposits, deposits made in addition to existing deposits in an institution, and deposits made in institutions not previously having a deposit, of the severance tax permanent fund made after these regulations go into effect. The regulations in effect at the time existing deposits were made shall govern those certificates of deposit.
[Recompiled 10/01/01]

2.60.21.3 STATUTORY AUTHORITY: Pursuant to Sections 6-10-9, 6-10-35, and 7-27-5.2 [repealed] NMSA 1978, the state investment officer shall receive and review written applications from banks and savings and loan associations that wish to qualify as depositories of the severance tax permanent fund. The council is empowered by Sections 6-8-7 and 7-27-5.2(I) [repealed] NMSA 1978 to establish regulations pertaining to the nature, limitations, conditions, and restrictions of investments of the severance tax permanent fund and to devise regulations to address the investment, deposit and allocation of such funds invested under Section 7-27-5.2 [repealed]. The state investment officer is required by Section 6-8-7 to "formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions, and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions which should govern the activities of the investment office." The council is required by Section 7-27-5.2(I) [repealed] to "devise guidelines to cover the investment, deposit and allocation of funds, among institutions qualifying under this section, of the severance tax permanent fund."
[Recompiled 10/01/01]

2.60.21.4 DURATION: [Permanent.]
[Recompiled 10/01/01]

2.60.21.5 EFFECTIVE DATE: [Filed June 6, 1988]
[Recompiled 10/01/01]

2.60.21.6 OBJECTIVE:

A. The purpose of these regulations is to exercise the council's rule making authority under Sections 6-8-7 and 7-27-5.2(I) [repealed] consistently with the requirements of 7-27-5.2 [repealed] and the overall investment standard governing the severance tax permanent fund and safety considerations imposed on the investment officer by Sections 6-8-7 and 7-27-5.2 [repealed]. These regulations define the procedure by which banks and savings and loan associations will apply for deposits of the severance tax permanent fund, the standards by which the state investment officer will evaluate such applications, the conditions applying to such applications, and the allocation of funds among depositories.

B. Credit unions may apply by filing an application form which may be obtained from the office of the state treasurer. This application will include either or both executed general fund or severance tax permanent fund depository agreements and the data required for the risk assessment report. The application is for both general fund and severance tax permanent fund deposits. Whether state funds deposited with the credit union will be severance tax permanent fund or general fund will depend on the term of the deposit and, of course, the availability of funds to be deposited. A credit union may not have state deposits in excess of \$100,000.
[Recompiled 10/01/01]

2.60.21.7 DEFINITIONS:

A. "Council" shall mean the state investment council.

B. "State funds" means funds of the severance tax permanent fund deposited pursuant to Sections 7-27-5 and 7-27-5.2 [repealed] NMSA 1978 (and known as the differential rate investments).

C. "Reinvestment of certificate of deposit" means the replacement upon maturity, of an existing deposit at the discretion of the investment officer acting in accordance with these regulations. For the purposes of these regulations, this will be considered the same as any other type of deposit except that the institution retains physical possession of the state funds rather than the funds being transferred from the state to the institution.

D. FOR BANKS

(1) "CLASS A" means a bank which meets all of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of 6 percent or greater.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio of .61 percent or greater;

(c) a ratio of non-performing loans (defined as loans which are at least 90 days past due) to primary capital ratio of 34.9 percent or less.

(d) Failure of a bank to meet any one of these ratios automatically results in reclassification into the next lower financial class.

(2) "CLASS B" means a bank which meets all of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of at least 5 percent.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio of at least .51 percent;

(c) a ratio of non-performing loans (defined as loans which are at least 90 days past due) to the bank's primary capital of no more than 49.9 percent.

(d) Failure of a bank to meet any one of these ratios automatically results in reclassification into the next lower financial class.

(3) "CLASS C" means a bank with any one of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of less than 5 percent.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio less than .51 percent;

(c) a ratio of non-performing loans (defined as loans which are at least 90 days past due) to the bank's primary capital of greater than 49.9 percent.

(4) "CLASS D" means a bank with any two of the following financial conditions:

(a) a primary capital to asset ratio (as defined by the FDIC) of less than 2 1/2 percent.

(b) a net income (current quarter plus previous three quarters after taxes) to average asset ratio of less than .10 percent;

(c) a ratio of non-performing loans to the bank's primary capital of greater than 67 percent, two quarters in a row during the past 12 months.

E. FOR SAVINGS AND LOAN ASSOCIATIONS:

(1) "CLASS A" means a savings and loan association which meets all of the following conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of 3 percent or greater;

(b) a ratio of the institutions' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of .30 percent or greater.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(2) "CLASS B" means a savings and loan association with all of the following conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of at least 2 percent;

(b) a ratio of the institutions' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of at least .2 percent.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(3) "CLASS C" means a savings and loan association with any one or more of the following financial conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of less than 2 percent;

(b) a ratio of the institutions' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of less than .20 percent.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(4) "CLASS D" means a savings and loan association with both of the following financial conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of less than 1 percent;

(b) A ratio of the institutions' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of less than .10 percent.

[Recompiled 10/01/01]

2.60.21.8 APPLICATION PROCESS: All New Mexico banks and savings and loan associations, desiring to receive deposits of the severance tax permanent fund pursuant to Sections 7-27-5 and 7-27-5.2 [repealed] NMSA 1978, as amended, including those institutions requesting reinvestments of certificates of deposit, shall make written application to the state investment officer as follows:

A. The application shall state the amount desired, the amount (if any) already on deposit under the severance tax permanent fund certificate of deposit program, and the percentage of state funds that will be deposited with that financial institution if the application is granted.

B. The application shall include a current financial statement of the institution.

C. The application shall state the financial institution's agreement to pay interest on the deposits in accordance with the interest rate policy set by the council under Section 7-27-5.2(A) [repealed] or Section 7-27-5.2(B) [repealed], to calculate all interest daily on a 365 day basis, and to make interest payments (accruing from the previous month) to the council upon the first day of the next following month.

D. The application shall state the conditions or penalties for early withdrawal that will be incorporated into the certificate of deposit documents that the financial institution will issue to the council.

E. The application shall state whether the request is for new deposits or for reinvestment of certificates of deposit made pursuant to Section 7-27-5.2(A) [repealed] or 7-27-5.2(B) [repealed], and shall describe the collateral that will be pledged to secure the deposits of state funds.

F. The application shall state the name of the bank or banks and/or savings and loan association or associations that the state treasurer's office has designated to act as the state's agent or agents in performing custodial functions with respect to pledged collateral and which the applicant plans to utilize.

[Recompiled 10/01/01]

2.60.21.9 INVESTMENT MANAGEMENT POLICY: The investment officer shall rule on applications and make funds available to all financial institutions in accordance with the applicable statutes and the investment criteria outlined below.

A. GENERAL STANDARDS GOVERNING APPLICATIONS:

(1) The applicant and the custodian or custodians designated by the state treasurer will have executed the form depository and custodial agreements for the severance tax permanent fund. The forms will then be approved and accepted by the state investment officer.

(2) The application shall comply with the fund limitations promulgated by statute and by the regulations of the council. In addition, the total deposits of state funds in a class C or class D institution shall not exceed 100 percent of net worth or primary capital.

(3) The rate of interest on all certificates of deposit shall be set at a market rate or 50 basis points over the bond equivalent yield of U.S. treasury securities of comparable maturity, whichever is greater. The treasury bonds, notes and bills section in the Wall Street Journal on the day the rate is set will be used as the reference. The state investment council will continuously monitor the interest rate and amend it as necessary.

(4) The exact maturity will be set by the state investment officer based on the cash management needs of the fund and on an analysis of risk versus maturity.

(5) The size of the certificate or certificates of deposit in each financial institution will be determined by the state investment officer in accordance with Section VI of these regulations [now Section 2.60.21.10 NMAC].

(6) If the terms of the deposit are not acceptable to the financial institution, then the institution retains the right to reject the deposit.

(7) The investment officer shall not invest in any certificate or certificates of deposit which contain early withdrawal penalties in excess of the minimum penalty required by federal laws.

(8) When deposits are cashed in or withdrawn, the certificate of deposit document(s) will be released from the fiscal agent in accordance with delivery instructions provided by the financial institution, but only after the state treasurer's office, state investment council or state investment officer takes physical receipt of all principal and interest due or owing to the state.

(9) The investment meets the asset allocation policy of these regulations;

(10) Granting the application is not in violation of applicable state law, these regulations, and/or other applicable regulations.

B. MATURITIES AND QUALIFYING FINANCIAL CONDITIONS:

(1) When state funds are deposited under the severance tax permanent fund certificate of deposit program, the maturity is not to exceed eight years in a class A bank or savings and loan association, and shall not exceed four years in a class B bank or savings and loan association. The state investment officer has full discretion in setting maturities. Class C and D institutions are not qualified for additional deposits, above and beyond existing deposits, and may or may not have existing deposits reinvested, as determined by the state investment officer pursuant to the rules and regulations governing such situations.

(2) When deposits mature in class C and class D institutions, the reinvestment of a certificate of deposit is limited to the amount of the pre-existing deposit. In this event, the maturities shall not exceed one year in the case of a class C bank or savings and loan association. In the case of a class D bank or savings and loan association, the deposit may be reinvested for a period not to exceed one month at the discretion of the state investment officer, and then only if needed to preserve the corpus of the deposit, or, secondarily, to prevent premature failure of the institution.

[Recompiled 10/01/01]

2.60.21.10 ASSET ALLOCATION: The funds available for investment in the certificate of deposit program will be allocated in accordance with the following criteria:

A. In order to have reasonable diversification as required by Section 6-8-7, economic stimulation as required by Section 7-27-5, and protection of the corpus as required by statutes referenced in Section I [now Section 2.60.21.3 NMAC] of these procedures, no more than 10 percent of the total amount required to be available for investment pursuant to Section 7-27-5.2 [repealed], 7-27-5.3, 7-27-5.4 and 7-27-5.5 in certificates of deposit may be invested at any one institution. If deposits in an institution exceed 10 percent of the severance tax permanent fund certificate of deposit investments on the effective date of these regulations, then deposits at that bank or savings and loan shall not be reinvested until the total amount of deposits are brought to or below 10 percent of the total investment in certificates of deposit or alternately, according to a plan approved by the council for a specific institution to come into compliance with these regulations.

B. No deposit is to be made that causes the financial institution to exceed the fund limitations in Section 7-27-5.2(G) [repealed] NMSA 1978, or in Section VI A [now Subsection A of 2.60.21.10 NMAC] of these rules. In addition, the total deposits in a class C or class D institution shall not exceed 100 percent of regulatory net worth or primary capital.

C. The first priority shall be to replace on maturity existing deposits of class A and class B institutions in such amounts and for such maturities as are appropriate. Reinvestment of certificates of deposits at class C institutions will be allowed secondarily.

D. For new deposits, eligible class A and class B institutions with no severance tax permanent fund deposits will have priority over other financial institutions.

E. If the demand is greater than the amount available for investment, the investment officer is directed to give priority to class A institutions, except as noted in Item D [now Subsection D of 2.60.21.10 NMAC] above.

F. If the demand by eligible class A institutions is greater than the amount available for investment, then the investment officer is directed to distribute the funds in such a manner as to promote both geographic and economic diversification around the state.

G. The distinction as to whether an institution is a bank or savings and loan is not to be considered in the allocation of state funds.

H. \$2,000,000 of the total state funds allocated for investment in certificates of deposit will be made available for deposits with credit unions. At no time is the deposit in a credit union to exceed the amount of insurance on the deposit.

I. The investment officer may disqualify any institution from receiving new deposits or reinvestments of certificates of deposits if that institution does not comply with the requirements promulgated by the council and/or dictated by other pertinent statutes.

J. If an institution believes that exceptional circumstances exist that indicate it would not be appropriate for the investment officer to take any of the actions listed above, the institution shall appear at a meeting of the state investment council to present its position. The council may at that time vote on whether an exception to the policy should be allowed, or it may continue the issue in order to take further evidence, testimony or advice. In order to be placed on the council's agenda, the institution shall submit a written request stating its position to the investment office at least 10 calendar days prior to the meeting, including a bill of particulars, copies of any statutes or cases it intends to use in its presentation as well as a list of names, titles, business addresses and phone numbers of anyone whose testimony it deems necessary.

K. If at any time a financial institution is not in compliance with council regulations, the state investment officer will be responsible for establishing a plan to bring the financial institution into compliance.

L. If after all requests for deposits of state funds are honored in accordance with these regulations and applicable state law, the total funds on deposit at all institutions are less than the legislated floor, those institutions that qualify for additional deposits will be notified, either individually or through their associations, of the availability of state funds for deposit, and will be encouraged to accept such deposits.

[Recompiled 10/01/01]

HISTORY OF 2.60.21 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

SIC Rule 88-5, Administrative Procedures for New Mexico Financial Institutions Applying for Deposits of Severance Tax Permanent Fund, 6-6-88.

History of Repealed Material: [RESERVED]